

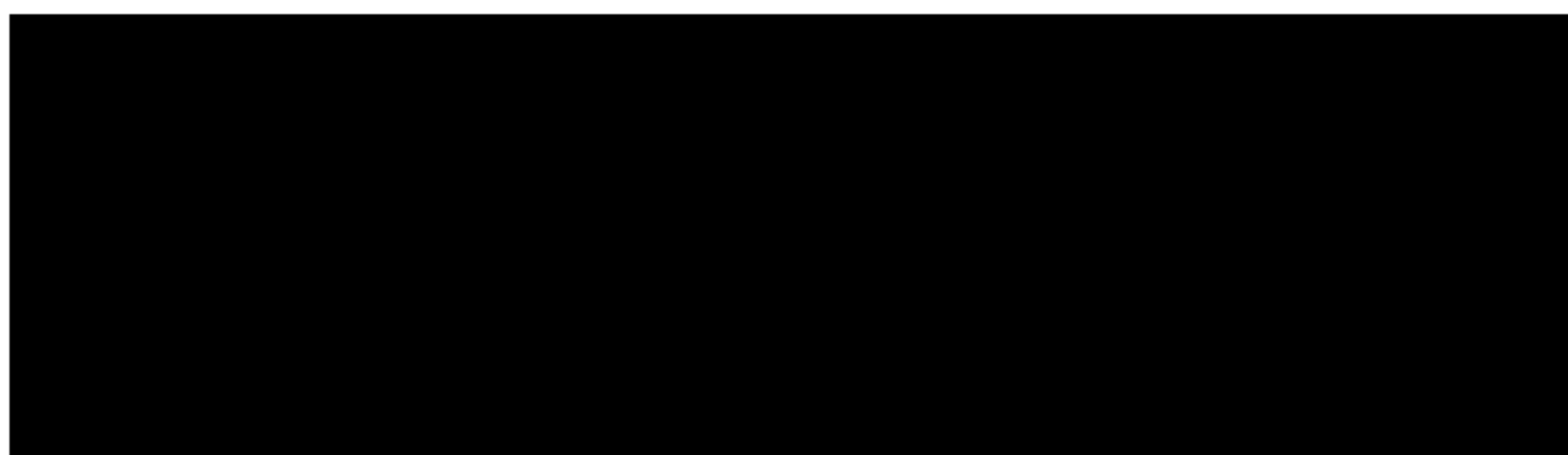
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B5



Date:

Office: NEBRASKA SERVICE CENTER

FILE: 

IN RE:

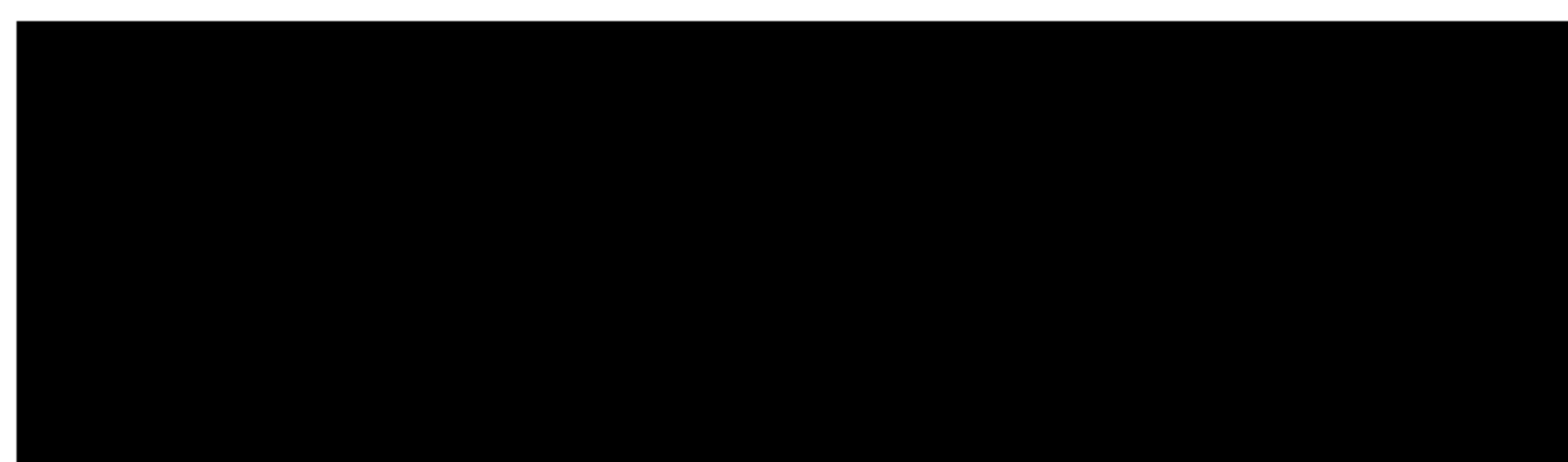
OCT 3 7 2011
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. It then came before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a computer software business. It seeks to employ the beneficiary permanently in the United States as a software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(2). As required by statute, an alien employment certification, which the Department of Labor (DOL) approved, accompanied the petition. The director determined that the petitioner had not established that the beneficiary possessed the requisite education for the position. Therefore, the director denied the petition.

On November 9, 2010, this office notified the petitioner that according to the records of the California Secretary of State's Business Search website, the petitioner's status is surrendered in that state. *See* <http://kepler.sos.ca.gov/cbs.aspx> (accessed October 14, 2011). The AAO advised that without additional information, the petition was not approvable.

This office also notified the petitioner that if its status is currently surrendered, this is material to whether the job offer, as outlined on the immigrant petition filed by this organization, is a *bona fide* job offer. Moreover, any such concealment of the true status of the organization by the petitioner seriously compromises the credibility of the remaining evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988)(stating that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.) It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Id.*

This office allowed the petitioner 30 days in which to provide evidence that the records maintained by the California Secretary of State were not accurate and that the petitioner remains in operation as a viable business or was in operation during the pendency of the petition and appeal. More than 30 days have passed and the petitioner has failed to respond to this office's request for a certificate of good standing or other proof that the petitioner remains in operation as a viable business or was in operation from the priority date onwards. The petitioner also failed to respond to the AAO's inquiry regarding the large number of petitions that it and its alleged predecessor company had filed. The AAO had asked the petitioner to submit information regarding its alleged successor-in-interest relationship and regarding its ability to pay the wages of all of those beneficiaries. The petitioner failed to respond to the AAO's request for the above listed information. Thus, the appeal will be dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).¹

¹ Additionally, as noted in the November 9, 2010 notice, even if the appeal could be otherwise sustained, the petition's approval would be subject to automatic revocation pursuant to 8 C.F.R. § 205.1(a)(iii)(D) which sets forth that an approval is subject to automatic revocation without notice upon termination of the employer's business in an employment-based preference case.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed as abandoned.